Executive Order, an administrative appeal must be filed within sixty days of receipt of the denial of the initial request.

(e) *Committee action on appeals and requests.* (1) The Committee shall promptly consider any appeal, together with any submissions in support thereof, and shall grant or deny the appeal or take such other action thereon as it may deem appropriate. The Committee's review, decision and action shall be based on and shall be in conformance with the Freedom of Information Act, Executive Order 12356 and other applicable law, directives, regulations and policy.

(2) The Committee shall promptly consider any requests for declassification under paragraph (a) of this section and shall declassify any such records or reasonably segregable portions or coherent segments of such records as it deems appropriate in accordance with the Executive Order.

(3) Committee action on appeals of FOIA determinations shall be completed within twenty work days of receipt of the appeal, and appeal of mandatory declassification review determinations shall be completed within thirty (30) workdays, except that the Committee may, in accordance with the provisions of § 1900.45, avail itself of an additional period of time for completion of its work on the appeal. But no such extension shall be available with respect to an appeal of a denial of a request which was the subject of an extension of time for Agency action by the Coordinator under that paragraph. In the event the Committee is unable to complete its review of an appeal within the time prescribed by the two preceding sentences it may, by agreement with the requester, extend the period for completion of such review.

(4) Concerning appeals under the FOIA, the Committee shall promptly inform the requester of its decisions and, with respect to any decision to withold or deny records, it shall furnish the names and titles or positions of the persons responsible for the decision. If any record or portion thereof is denied the requester by the Committee's action, the Committee shall also inform the requester of the provision for judicial review of that determination under subsection (a)(4) of the Freedom of Information Act.

(5) Concerning appeals under the mandatory declassification review provisions of the Executive Order, Committee decisions are final.

MISCELLANEOUS

§ 1900.61 Access for historical research.

(a) Any person engaged in a historical research project may submit a request, in writing, to the Coordinator to be given access to information classified pursuant to an Executive Order for purposes of that research. Any such request shall indicate the nature, purpose, and scope of the research project. It is the policy of the Agency to consider applications for historical research privileges only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records under the Freedom of Information Act or the Executive Order.

(b) The Coordinator may authorize access, under such conditions and at such time and place as he may deem feasible. But the Coordinator shall authorize access only with respect to documents and records prepared or originated not less than ten years prior to the date of such request and only upon the prior written approval by the Agency Director of Security of a current security clearance of the requester and of persons associated with him in the project, in accordance with Executive Order 10450, and upon the Coordinator's further determination that:

(1) A serious professional or scholarly research project is contemplated;

(2) Such access is clearly consistent with the interests of national security;

(3) Appropriate steps have been taken to assure that classified information will not be published or otherwise compromised;

(4) The information requested is reasonably accessible and can be located and compiled with a reasonable amount of effort;

(5) The historical researcher agrees to safeguard the information in a manner consistent with Executive

to safeguard the classified material to which access is granted in accordance with Agency security requirements; and

(6) The historical researcher agrees to authorize a prior review of his notes and manuscript by the Agency for the sole purpose of determining that no classified information is contained therein.

(c) An authorization shall be valid for the period required for the research project, as the Coordinator may determine, but in no event for more than two years. But upon renewed request in accordance with paragraph (a) of this section, authorization may be renewed in accordance with paragraph (b) of this section and this paragraph.

(d) The Coordinator shall cancel any authorization whenever the Director of Security cancels the security clearance of the requester or of any person associated with the requester in the research project or whenever the Coordinator determines that continued access would not be in compliance with one or more of the requirements of paragraph (b) of this section.

§ 1900.63 Suggestions and complaints.

Any person may direct any suggestion or complaint with respect to the Agency administration of Executive Order 12356 to the CIA Information Review Committee. The Committee shall consider such suggestions and complaints and shall take such action thereon as it may deem feasible and appropriate.

PART 1901—RULES AND REGULATIONS TO IMPLEMENT THE PRIVACY ACT OF 1974

Sec.

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AUTHORITY: 5 U.S.C. 552A; 5 U.S.C. 553.

SOURCE: 40 FR 45322, Oct. 1, 1975, unless otherwise noted.

§ 1901.1 Purpose and scope.

(a) This proposed regulation is published pursuant to the Privacy Act of 1974 (5 U.S.C. 552a). This proposed regulation establishes procedures by which an individual may request notification of whether the Central Intelligence Agency maintains a record pertaining to him in any non-exempt portion of a system of records or any non-exempt system of records, request a copy of such record, request that the record be amended, appeal any initial adverse determination of any request to deny access to or amend a record and submit additional data to augment or correct such record. The proposed regulation further specifies those systems of records or portions of systems of records the Director has determined to exempt from the procedures established by this regulation and from certain provisions of the Act.

(b) The purpose of the proposed general exemption, in the instance of polygraph records, is to prevent access and review of records which intimately reveal a CIA security method. The purpose of the proposed general exemption from the provisions of subsections (c)(3) and (e)(3) (A-D) is to avoid disclosures that may adversely affect ongoing operational relationships with other intelligence and related organizations and thus reveal or jeopardize intelligence sources and methods or risk exposure of intelligence sources and methods in the processing of covert employment applications.

(c) The purpose of the proposed general exemption from subsections (d), (e) (4) (G), (f) (1) and (g) of the Act is

to protect only those portions of systems of records which if revealed would risk exposure of intelligence sources and methods or hamper the ability of the CIA to effectively use information received from other agencies or foreign services.

(d) It should be noted that by subjecting information which would consist of, reveal or pertain to intelligence sources and methods to separate determinations by the Director of Central Intelligence under § 1901.61 (c) and (d) regarding access and notice, an intent is established to apply the exemption from access and notice only in those cases where notice in itself would constitute a revelation of intelligence sources and methods. In all cases where only access to information would reveal such source or method, notice will be given upon request.

(e) The purpose of the proposed specific exemptions provided for under section (k) of the Act is to exempt only those portions of systems of records which would consist of, pertain to or reveal that information which is enumerated in the above noted section (k).

(f) In each case, the Director of Central Intelligence has determined that the enumerated classes of information should be exempt in order to comply with directives in Executive Order 11652 dealing with the proper classification of national defense or foreign policy information; protect the privacy of other persons who supplied information under an implied or express grant of confidentiality in the case of law enforcement or employment and security suitability investigations or promotion material in the case of the armed services; protect information used in connection with assisting in protective services under 18 U.S.C. 3056; protecting the efficacy of testing materials; and protect information which would constitute information required by statute to be maintained and used solely as statistical records.

§ 1901.3 Definitions.

For the purposes of this part:

(a) "Agency" means each authority of the United States Government as defined in 5 U.S.C. 552(e).

(b) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence who is a living being and to whom a record might pertain.

(c) "Maintain" means maintain, collect, use, or disseminate.

(d) "Record" means an item, collection or grouping of information about an individual that is maintained by the Central Intelligence Agency.

(e) "System of Records" means a group of any records under the control of the Central Intelligence Agency from which records are retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual.

(f) "Routine use" means (with respect to the disclosure of a record) the use of such record for a purpose which is compatible with the purpose for which the record is maintained.

§ 1901.11 Procedures for requests pertaining to individual records in a record system.

(a) An individual seeking notification of whether a system of records contains a record pertaining to him or an individual seeking access to information or records pertaining to him which is available under the Act shall address his request in writing to the Privacy Act Coordinator, Central Intelligence Agency, Washington, D.C. 20505.

(b) In addition to meeting the identification requirements set forth in § 1901.13 individuals seeking notification or access shall, to the best of their ability, describe the nature of the record sought and the system in which it is thought to be included, as described in the Notices of Records Systems which is published in the August 28, 1975 issue of the FEDERAL REGISTER.

§ 1901.13 Requirements for identification of individuals making requests.

(a) An individual seeking access to or notification of the existence of records about himself shall provide in the letter of request his full name, address, date and place of birth together with a notarized statement swearing to

mined by the Privacy Act Coordinator that this information does not sufficiently identify the individual, the Privacy Act Coordinator may request additional identification from the individual or clarification of information submitted by the individual.

(b) In the case of an individual who is an alien lawfully admitted for permanent residence, said individual shall provide, in addition to the information required under paragraph (a) of this section, his or her Alien Registration number.

(c) The parent or guardian of a minor or a person judicially determined to be incompetent shall, in addition to establishing the identity of the minor or person represented as required in paragraph (a) or (b) of this section, establish evidence of such parentage or guardianship by providing a copy of the minor's birth certificate or the court order establishing such guardianship.

§ 1901.15 Disclosure of requested information to individuals.

(a) The Privacy Act Coordinator shall within ten days (excluding Saturdays, Sundays and legal holidays) send the requester written acknowledgment pursuant to § 1901.11 of receipt of the request.

(b) Responses to requests made pursuant to § 1901.11 will be made promptly by the Privacy Act Coordinator.

(c) The Privacy Act Coordinator upon receipt of a request made pursuant to § 1901.11 shall refer the request to the responsible components.

(d) The responsible components shall:

(1) Determine whether a record exists; and

(2) Determine whether access may be available under the Act.

(e) The responsible components shall inform the Privacy Act Coordinator of any determination made pursuant to paragraph (d) (1) or (2) of this section. The Privacy Act Coordinator shall, in turn, notify the individual of the determination and shall provide copies of records determined to be accessible if copies have been requested. In the event that information pertaining to a record in a system was received from another Federal agency, the individual will be so notified and that information shall be referred to the originating agency.

(f) If a determination has been made not to give access to requested records the Privacy Act Coordinator shall inform the individual of the reason therefor and the right of appeal of this determination by the responsible components under § 1901.17.

(g) This section shall not be construed to allow access to information determined to be exempt under determinations made pursuant to 5 U.S.C. 552a (j) and (k).

[40 FR 45322, Oct. 1, 1975, as amended at 41 FR 19105, May 10, 1976]

§ 1901.17 Appeal of determination to deny access to requested record.

(a) Any individual whose request made pursuant to § 1901.11 is refused may appeal by submitting a written statement setting forth the basis for the appeal to the Privacy Act Coordinator. Persons who require procedural guidance in preparing an appeal to the Agency's initial refusal to provide records may write for assistance to the Privacy Act Coordinator, Central Intelligence Agency, Washington, D.C. 20505.

(b) The Privacy Act Coordinator, upon receipt of the appeal letter, shall promptly refer the appeal to the Deputy Directors of the responsible components and shall inform the Deputy Directors of the date of receipt of the appeal and shall request the Deputy Directors make a determination on the appeal within thirty days (excluding Saturdays, Sundays or legal holidays).

(c) The Deputy Directors of the responsible components, or senior officers designated by them, shall review the initial decision to deny access to the requested records and shall inform the Privacy Act Coordinator of the review determination. The Privacy Act Coordinator shall, in turn, notify the individual of the result of the determination. If the determination reverses the initial denial, the Privacy Act Coordinator shall provide copies of the records requested. If the determination upholds the initial denial the Pri-

vacy Act Coordinator shall inform the individual of his right to judicial review as provided for by this part.

[40 FR 45322, Oct. 1, 1975, as amended at 41 FR 19105, May 10, 1976]

§ 1901.19 Special procedures for disclosure of medical and psychological records.

(a) When a request for copies of medical records is made by an individual and when the Privacy Act Coordinator determines that such medical and psychological records are not exempt from disclosure, the Privacy Act Coordinator, after consultation with Director of Medical Services, may determine (1) which medical or psychological records may be sent directly to the requestor and (2) which medical or psychological records should not be sent directly to the requestor because of possible harm to the individual. In the case of paragraph (a)(2) of this section, the Privacy Act Coordinator shall so notify the requestor.

(b) When a determination has been made not to make medical or psychological records noted in paragraph (a) of this section available to the individual the Privacy Act Coordinator shall inform the individual that the medical or psychological record will be made available to a physician of the individual's choice if the individual specifically requests. Upon receipt of such request and after proper verification of the identity of the physician, the Privacy Act Coordinator shall send such records to the named physician.

§ 1901.21 Request for correction or amendment of record.

(a) An individual may request amendment or correction of a record pertaining to him by addressing such request by mail to the Privacy Act Coordinator, Central Intelligence Agency, Washington, D.C. 20505. The request shall identify the particular record the individual wishes to amend or correct, the nature of the correction or amendment sought, and a justification for such correction or amendment.

(b) Within ten days of receipt of the request by the Privacy Act Coordinator (excluding Saturdays, Sundays and legal holidays) the Privacy Act Coordinator shall acknowledge receipt of the request.

(c) The Privacy Act Coordinator shall refer such requests to the components responsible for the record upon receipt of such request, shall advise the responsible components of the date of receipt and shall request that the responsible components make an initial determination on such request within thirty days of receipt (excluding Saturdays, Sundays and legal holidays).

(d) The responsible components shall:

(1) Make any correction or amendment to any portion of the record which the individual believes is not accurate, relevant, timely, or complete, and inform all other identified persons or agencies to whom the record has been amended and inform the Privacy Act Coordinator of this action; and the Privacy Act Coordinator shall, in turn, promptly inform the requestor; or

(2) Determine that the requested correction or amendment will not be made and shall so inform the Privacy Act Coordinator who, in turn, shall promptly inform the individual, setting out the reasons for the refusal and advising the individual of the right of appeal to Deputy Directors of the responsible components under § 1901.23.

[40 FR 45322, Oct. 1, 1975, as amended at 41 FR 19105, May 10, 1976]

§ 1901.23 Appeal of initial adverse agency determination on correction or amendment.

(a) Any individual whose request made pursuant to § 1901.21 is refused may appeal such refusal.

(b) Appeals shall be sent in writing to the Privacy Act Coordinator and shall identify the particular record which is the subject of the appeal and shall state the basis for the appeal.

(c) The Privacy Act Coordinator, upon receipt of the appeal letter, shall promptly refer the appeal to the Deputy Directors of the responsible components and shall inform the Deputy Directors of the date of receipt of the appeal and shall direct that the Deputy Directors make a decision within thirty days (excluding Saturdays, Sundays or legal holidays).

(d) The Deputy Directors of the responsible components, or senior officers designated by them, shall determine whether or not to amend the record and shall inform the Privacy Act Coordinator of the determination. The Privacy Act Coordinator shall, in turn, notify the individual of the result of the determination, and inform the individual of his right to submit a statement pursuant to paragraph (e) of this section or to judicial review as provided for in this part.

(e) If, on appeal, the refusal to amend or correct the record is upheld, the individual may file a concise statement setting forth the reasons for his disagreement with the determination. This statement shall be sent to the Privacy Act Coordinator, Central Intelligence Agency, Washington, D.C. 20505, within thirty days of notification of refusal to correct or amend the record. The System Manager shall clearly note any portion of the record which is disputed, and provide copies of the statement and, if the System Manager deems it appropriate, copies of a concise statement of reasons for not making the requested amendments to all other identified persons or agencies to whom the disputed record has been disclosed.

(f) The Director of Central Intelligence may extend up to thirty days the time period prescribed in paragraph (c) of this section within which to make a determination on an appeal from a refusal to amend or correct a record if it is found that a fair and equitable review cannot be completed within the prescribed time.

[40 FR 45322, Oct. 1, 1975, as amended at 41 FR 19105, May 10, 1976]

§ 1901.31 Disclosure of a record to a person other than the individual to whom it pertains.

(a) No record which is within a system of records shall be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record

(1) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) Required under 5 U.S.C. 552.

(3) For a routine use as defined in § 1901.3(f), as contained in the Notice of Systems published in the FEDERAL REGISTER of August 28, 1975 and as described in subsection (e)(4)(D) of the Act.

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of

the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

§ 1901.41 Fees.

No fee shall be charged for the provision of copies of records requested under the Privacy Act (5 U.S.C. 552a).

§ 1901.51 Penalties.

(a) Criminal penalties may be imposed against any officer or employee of the CIA who, by virtue of his employment, has possession of, or access to, Agency records which contain information identifiable with an individual, the disclosure of which is prohibited by the Act or by these rules, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it.

(b) Criminal penalties may be imposed against any officer or employee of the CIA who willfully maintains a system of records without meeting the requirements of subsection (e)(4) of the Act (5 U.S.C. 552a(e)(4)).

(c) Criminal penalties may be imposed upon any person who knowingly and willfully requests or obtains any record concerning an individual from the CIA under false pretenses.

§ 1901.61 General exemptions.

(a) Pursuant to authority granted in section (j) of the Act (5 U.S.C. 552a(j)) the Director of Central Intelligence has determined to exempt from all sections of the Act except 552a(b), (c) (1) and (2), (e) (1) (4) (A) through (F), (e) (5), (6), (7), (9), (10), and (11), and (i) the following systems of records or portions of records in a system of record:

(1) Polygraph records.

(b) Pursuant to authority granted in section (j) of the Act the Director of Central Intelligence has determined to exempt from subsections (c)(3) and (e)(3) (A through D) of the Act all systems of records maintained by the CIA.

(c) Pursuant to authority granted in subsection (j) of the Act the Director of Central Intelligence has determined to exempt from notification under subsections (e)(4)(G) and (f)(1) those portions of each and all systems of records which have been exempted from individual access under subsection (j), in those cases where the Privacy Act Coordinator determines after advice by the responsible components, that confirmation of the existence of a record may jeopardize intelligence sources and methods. In such cases the CIA may choose to neither confirm nor deny the existence of the record and may advise the individual that there is no record which is available to him pursuant to the Privacy Act of 1974.

(d) Pursuant to authority granted in subsection (j) of the Act the Director of Central Intelligence has determined to exempt from access by individuals under subsection (d) of the Act those portions and only those portions of all systems of records maintained by the CIA that;

(1) Consist of, pertain to, or would otherwise reveal intelligence sources and methods;

(2) Consist of documents or information provided by foreign, federal, state, or other public agencies or authorities.

(e) Pursuant to authority granted in subsection (j) of the Act the Director of Central Intelligence has determined to exempt from judicial review under subsection (g) of the Act all determinations to deny access under section (d) of the Act and all decisions to deny notice under subsections (e) (4) (G) and (f) (1) of the Act pursuant to determination made under paragraph (c) of this section when it has been determined by an appropriate official of the CIA that such access would disclose information which would;

(1) Consist of, pertain to or otherwise reveal intelligence sources and methods;

(2) Consist of documents or information provided by foreign, federal, state, or other public agencies or authorities.

§ 1901.71 Specific exemptions.

(a) Pursuant to authority granted in subsection (k) of the Act (5 U.S.C. 552a (k)) the Director of Central Intelligence has determined to exempt

records maintained by the CIA that would consist of, pertain to or would otherwise reveal information that is:

(1) Subject to the provisions of section 552(b)(1) of Title 5 U.S.C.;

(2) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Act; *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) Required by statute to be maintained and used solely as statistical records;

(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

PART 1902—INFORMATION SECURITY REGULATIONS

Subparts A–E—[Reserved]

Subpart F—Declassification and Downgrading

§ 1902.13 Declassification and Downgrading Policy.

(a) [Reserved]

(b) [Reserved]

(c) The Executive Order provides that in some cases the need to protect properly classified information "may be outweighed by the public interest in disclosure of the information," and that "when such questions arise" the competing interests in protection and disclosure are to be balanced. The Order further provides that the information is to be declassified in such cases if the balance is struck in favor of disclosure. The drafters of the Order recognized that such cases would be rare and that declassification decisions in such cases would remain the responsibility of the Executive Branch. For purposes of these provisions, a question as to whether the public interest favoring the continued protection of properly classified information is outweighed by a public interest in the disclosure of that information will be deemed to exist only in circumstances where, in the judgment of the agency, nondisclosure could reasonably be expected to:

(1) Place a person's life in jeopardy.

(2) Adversely affect the public health and safety.

(3) Impede legitimate law enforcement functions.

(4) Impede the investigative or oversight functions of the Congress.

FOIA
5/17/84

Mr. Chairman, and members of the committee, it is my pleasure to appear today, bringing to your attention my research into the proposed C.I.A. exemption to the Freedom of Information Act.

By way of introduction, I am Angus Mackenzie, director of the Freedom of Information Project at the Center for Investigative Reporting in San Francisco. I am a freelance reporter; this year my stories have appeared in Jack Anderson's column in more than 550 newspapers, on the cover of the Society of Professional Journalists magazine, The Quill, which goes to 28,000 scribes, and in the publication of the Newspaper Guild, called the Guild Reporter, among others.

I gained my expertise in the FOIA by banging my head against agency reluctance to supply documents that I know exist. Specifically, in 1979 while on assignment for the Columbia Journalism Review, themost prominent publication of its kind. I requested that the Central Intelligence Agency release files it accumulated during its campaign against the dissident U.S. press. As you know, the agency is prohibited from internal-security functions by the 1947 National Security Act, and because the exemptions to the FOIA enacted by Congress are NOT supposed to be used to cover up illegal activities, I expected the CIA to release them. That was in 1979.

With permission of the chairman, I wish to submit for the record of this hearing several of my articles describing the efforts of the CIA to keep those records from me. Suffice it to say that one of the goals of this legislation is to keep from me, and from the American public, information on how the CIA led the U.S. intelligence community on a war against domestic newspapers that were opposed to the Vietnam conflict.

The CIA infiltrated newspapers like the Quicksilver Times of Washington, D>C>, and kept control of local police informants through double-blind arrangements so that local informants in such places as Lubbock, Texas, did not know that the information they were giving local police regarding the publication of mimeographed sheets against the war was really going to the Central Intelligence Agency.

At the time, my article, "Sabotaging the Dissident Press," was published by the Columbia Journalism Review in March, 1981, not one record released to me under the FOIA by the CIA. I am still trying to obtain CIA documents regarding that campaign.

The first obstacle the agency threw in my path was a large fee for the search of its records. The agency wanted a down payment of $30,000 and a promise to pay a total of $61,501 for

the search, in return for which the agency said it might find no documents releasable. On the same day that my article was being picked up by the Associated Press, both in newspapers and radio stations nationwide, the agency stated that my work would not benefit the general public and so no fee waiver would be granted in this case.

With pro bono counsel provided by Steptoe and Johnson, obtained for me by the Reporters Committee for Freedom of the Press, I filed suit against the CIA June 14, 1982, and that case is still very much before the courts. Judge Pratt in this district has ordered the CIA to finish processing records on Ramparts magazine by May 15. However, from what we hqave seen so far it is clear that the agency is severely censoring most of the documents I have requested. In other instances, the agency has not admitted to possessing records which I can prove to this committee exist. In other instances, the agency has released records to others, but not to me, showing in my opinion some degree of arbitrariness. To the agency's credit, it forgot all about the $61,601 fee the minute I stepped into federal court with my complaint. The agency granted me a fee waiver in that case, but not in most of my other pending FOIA requests.

So that gives a brief explanation of how I come to be here today, and why I have gained some expertise with the FOIA, and how it applies to the CIA.

I oppose H.R 5164. I bring from The Newspaper Guild President, Charles A. Perlik, Jr., who regrets that he cannot be here today, a message for the commmittee. The Newspaper Guild is against this legislation, and asks you not to report it to the House.

This legislation has sailed through the Senate, and through one House committee, without even one public discussion of what this bill would cover up. Indeed, we have heard that this bill would hide nothing. The CIA says that. The ACLU says that. But I don't say that. I bring to you today research to show exactly what the agency intends this bill to hide, including some very embarassing CIA activities, like those actions against the dissident U.S. press.

I will also raise some political questions concerning whether or not Congress at this point really thinks it wise to grant to the Director of Central Intelligence sweeping new powers to keep secrets when he has been roundly blasted for keeping information from Congress regarding the mining of Nicaraguan ports. But first, allow me to examine with you the precise wording of the legislation before us -- wording that my research indicates was drafted by the CIA.

What does H.R. 5164 really say, and why? It says that operational files of the CIA may be exempted by the Director of Central Intelligence from the provisions of the FOIA.

Then, Sec. 710 (b) defines "operational files." That term

means "(1) files of the Directorate of Operations which document the conduct of foreign intelligence OR intelligence OR security liaison arrangements OR information exchanges with foreign governments or their intelligence or security services."

Now I have capitalized the ORs here. Because what this bill as now written says is that intelligence activities of the CIA as recorded in DO are exempt from disclosure. The committee should understand that this amounts to an exemption from the search and release requirements of the FOIA for CIA domestic operations which were prohibited and still are prohibited by the 1947 National Security Act. This is because since 1967, CIA domestic operations have been run in part by the Directorate of Operations, and so files on any future domestic intelligence operations in the Directorate of Operations would be hidden by this legislation. I do not believe that it is Congress's intent to with this bill allow the CIA to cover up domestic operations of questionable legality. Yet that is exactly what this legislation will do, if passed.

Further, the bill as now written will allow the CIA to hide from the search and release requirements of the FOIA its liaison arrangements with local U.S. police departments. Again, the 1947 National Security Act prohibits CIA police functions, and we know that at least from 1967 onward the agency has worked very closely with local police, including running local police informants who were inside dissident publications. Now, as written,the proposal would allow the agency to hide documentation of any such continuing relationships of questionable legality with local police departments.

Likewise, the bill would allow the CIA to cover up its past and any future domestic operations by calling those operations "counterintelligence." This bill provides that counterintelligence files no longer have to be searched and released. Fine. Counterintelligence is the word the agency used to describe its entire program against the civil rights movement, the antiwar movement, and the so-called underground press. In other words, by approving this language, the Congress will be providing statutory permission for the CIA to cover up its domestic operations, which many fine people in the CIA agree are illegal. And that point, I am afraid, has not been raised in previous hearings on this proposal.

As I have said, I am opposed to this legislation, largely for the above reasons. If you are going to approve this measure, I would strongly hope that this committee would change the language of the measure, removing the ORs so that just foreign counterintelligence operations on foreign soil be exempted, and that only foreign security liaision arrangements be exempted. The least that could be done is not make this bill a coverup for domestic activities of questionable legality. I need not remind the committee that on December 4, 1981, President Reagan authorized CIA domestic counterintelligence activities again, and that the Director of Central Intelligence has been implicated by the White House chief of staff in domestic political espionage.

So the question of CIA domestic political activities is not exactly a thing of the past, necessarily.

Section 710 c) (3) presents another problem. It says that I will be able to request records when those documents have been "the specific subject matter of an investigation by the intelligence committees of the congress, etc."

Well, now, my request for CIA records of operation CHAOS which targeted the underground press, comes under this section. Indeed, because CHAOS was the subject of an investigation by Sen. Church°s committee on Government Operations with respect to intelligence activities, it might seem that those records would be accessible to me. But no. The Church committee did not SPECIFICALLY inspect the agency's files on the underground press, and this proposal would allow the CIA to therefore deny my request. Provisions such as this provide the CIA with loopholes which render the FOIA virtually useless.

At the House Intelligence Committee hearings on this legislation I specifically asked Mr. Mayerfeld what files on the dissident U.S. press might be available under FOIA should this legislation be enacted -- given that Sen. Church°s committee overlooked them. · Mr. Mayerfeld said that he'd have to do more research into that question. The agency has used every legal and less-than-legal trick in the book to keep those files from me, and Mr. Mayerfeld's non-answer means that this section of the proposal would be used in court to deny my access to those files that now are almost 15 years old. At any rate, we might be tied up in court for the next five years figuring out whether that language means those files are exempt. The CIA has more money to pay lawyers than any newspaper in the nation, and any proposed legislation that would delay the release of information while what the meaning of the language is hashed out in court, accordingly serves the agency's intent.

So, to conclude this section of my testimony, I hope that I have begun to show that while the agency says this proposal would cover up nothing, that this is far from the case. The proposed law would in reality cover up much that is embarrassing to the agency.

Whether or not the proposed law is a coverup is a hard question to answer. First, C.I.A. files are secret. So no one outside the agency knows much about operational files. Second, the F.O.I.A. is so technical, especially in regards to the C.I.A., that only a handful of experts understand the bills.

However, this investigation has discovered that C.I.A. officials intend the proposed law to cover up some of its most embarassing illegal operations -- and some of its blunders. Worse, C.I.A. officials at a hearing on the proposal at the Capitol February 8 asked the House Intelligence Committee to remove one of the only checks on the agency's power -- judicial review of its files as provided for in the F.O.I.A.

F.O.I.A. requesters who are refused documents may file civil suit in federal court for the release of information. Judges may

then summon the requested papers to their chambers, read them, and decide whether the agency's withholding decision was correct. So far the C.I.A. has not lost a single case on appeal. Nevertheless, it unnerves intelligence officials to have judges inspect their files.

In addition, C.I.A. officers dislike judicial review because the possibility of inspection prompts the agency to disclose information that it might otherwise withhold.

After F.O.I.A. suits are filed, officials release information to head off the possibility that a judge might reverse the agency's decision to withhold documents.

One section of the bill passed by the Senate may retroactively remove judicial review by permitting the dismissal of pending cases that now seek C.I.A. operational files. Last year Senator Patrick J. Leahy, Democrat from Vermont, asked the C.I.A. to specify which lawsuits the proposed law might dismiss of the sixty-odd pending against it. The C.I.A. responded on September 22 with a list of 12 that it said "may be affected." This investigation has centered on that unpublished list and has pulled the complete filings out of courthouses from around the nation -- a task not performed by either of the congresssional intelligence committees which approved this legislation.

This C.I.A. list of suits that this legislation may affect essentially remains the only indiction of agency intent in a debate stymied by the cloak over the files in question. Here, then, are the suits the agency says might be dismissed by the proposed law, giving some indication of the type of information the agency wishes to hide under this proposed law.

* Ann Arbor, Michigan -- Glen L. Roberts owns a computer software company. He publishes a newsletter that describes itself as "a fresh outlook on government arrogance." He requested C.I.A. files on David S. Dodge, formerly the acting American University president in Beirut who was kidnapped there July 19, 1982, and released July 21, 1983.

The C.I.A. failed to produced its records. Roberts sued. On September 28, 1983, U.S. District Court Judge Charles W. Joiner ordered the C.I.A. to produce information by January 26, 1984. One day prior to that deadline, the agency express mailed Roberts five Directorate of Operations documents which indicated inconclusively that the agency did not have much direct knowledge of the Dodge affair. The papers were heavily censored.

Roberts is now seeking more of the withheld Dodge documents. His lawsuit remains on the C.I.A.°s "may be affected" list apparently because the information he wants is held by the agency's Directorate of Operations, which is one of the departments of the agency to be exempt from disclosure under the proposed law.

* Washington, D.C. -- On August 6, 1982, Monica Andres, formerly the librarian for the American Civil Liberties Union's Center for National Security Studies, requested C.I.A. documents regarding agency involvement in the El Salvador elections of March, 1982. The C.I.A. failed to produce and the Center sued on

October 5, 1982. In response, the agency released some information.

One memorandum of January 22, 1982, two months before the election, appears to describe what the agency proposed to assist the balloting. Subpoint A in that memo details the intended use of "indelible ink" to identify those who might try to vote more than once, and the need for 8,000 lights to illuminate the identifying ink on voters' hands. Other subpoints were deleted.

One expert on Central America, Robert Armstrong, says, "On the basis of those documents, we can say the C.I.A. was involved in the El Salvador elections in areas other than had previously been admitted by the Director of Central Intelligence. If we get the rest of those documents, we could see what that role was."

A C.I.A. affidavit filed with the court says the release of more information "would reasonably be expected to increase tensions between the U.S. and the country at issue."

* Washington,D.C. -- The C.I.A. responded to another Center for National Security Studies suit by releasing reports from C.I.A. infiltrators inside the Students for a Democratic Society (the defunct radical group), the Vietnam Veterans Against the War, radical U.S. bookstores and newspapers, and the Los Angeles antiwar convention at the University of California July 21 and 22, 1972. The agency also released an informant report on Pacific News Service, the San Francisco-based syndicate. Those domestic operational files are of particular interest because the agency is prohibited from "internal-security functions" by the 1947 National Security Act.

The C.I.A. included this lawsuit in its "may be affected" list, perhaps because, as CNSS attorney Graeme W. Bush says, "We've gotten a whole lot of documents from the operational files. Although some say the files are worthless, the Center has found useful stuff in them."

Washington, D.C. -- J. Gary Shaw of Cleburne, Texas, is investigating with a coalition of researchers the President John F. Kennedy assassination. So he requested C.I.A. files on suspects including right-wing French terrorists in Dallas that fateful day who hated Kennedy. The C.I.A. refused Shaw's 300 requests for information, so he sued the agency 32 times. Since those lawsuits began, the agency has released to Shaw four linear feet of files, his attorney says.

Shaw's suits have been consolidated, and now six of them constitute half of the 12 on the "may be affected" list, making the Kennedy-related information the single biggest pile of paper the agency has said it wants to hide under the proposed law.

One source who attended a secret meeting to discuss the list between representatives of a congressional committee and C.I.A. attorneys says the Kennedy-related requests are indeed for operational files and so clearly would be dismissed by the Senate's version of the legislation.

Reader's Digest writer Henry Hurt says the Kennedy C.I.A. files are "essential" and he is incorporating those released to Shaw in his forthcoming book on the tragedy. Shaw says the

nuggets of information contained in the files already released to Shaw contradict C.I.A. claims that any operational files that have been released contain little useful information.

Says Hurt, "There's no one left at the C.I.A. who understands the relevance of those files. If they DO think there's anything useful in them, they WON'T release it. It is my job to make sense out of those thousands of pages. Each nugget I discover contributes to the larger picture. It is chilling to think of having those files cut off by this legislation."

* New York City -- Digest writer Hurt wrote a book on Dr. Nicholas George Shadrin, who had commanded a Russian navy destroyer before he defected to the U.S. in 1959. On December 20, 1975, something went wrong. Shadrin disappeared from Vienna, Austria and is presumed dead.

Hurt and others have accused the C.I.A. of mishandling Shadrin, of twisting his arm to become a double agent, a role that ended with his disappearance. Tad Szulc in New York magazine roasted the agency for using Shadrin as "bait for the Russians."

To clarify matters, on July 9, 1979, Reader's Digest requested Shadrin's C.I.A. file. The C.I.A. refused. On September 11, 1979, the Digest sued. In court, C.I.A. officials said 50,000 pages of information were involved -- a document count that later ran the agency into trouble with the judge. Intelligence officials also said, "The Shadrin case is of such sensitivity that the disclosure of even fragementary details...could jeopardize the lives of our sources."

Nevertheless, under the gun of judicial review, the agency between January and May, 1980, released 61 Shadrin documents. U.S. District Court Judge Robert J. Ward was convinced by the C.I.A. that "this information should not be revealed," and he prepared to dismiss the case.

The C.I.A. then changed its document count from 50,000 to 205,000 and displayed other inconsistancies so gross that the judge reversed his inclination to dismiss the case and complained, "The court has been lead on a merry chase." The judge asked the U.S. attorney if pending legislation might affect the case, on which the judge was spending so much time. The U.S. attorney indicated no such legislation was pending. However, unknown to the judge, legislation that might affect the case had been introduced to Congress three years earlier in 1979, and was high on the C.I.A.°s list of congressional priorities.

The judge ordered the Shadrin file brought from C.I.A. headquarters into his chambers for his inspection because he could no longer believe the C.I.A. Ten months later, on April 22, 1983, the C.I.A. had yet to deliver the papers to the judge.

"The old government game is at work, that if we delay long enough, they will go away," complained the judge. Finally, only 5,000 pages were brought to his chambers. His decision is pending on whether to make that information public.

* Washington, D.C. -- The C.I.A. list of suits that may be affected includes one that seeks information on behalf of this correspondent regarding the agency's targeting of dissident U.S.

periodicals, exposed in "Sabotaging the Dissident Press," Columbia Journalism Review, March/April, 1981. C.I.A. congressional liaision Ernest Mayerfeld refused to specify to this reporter which of its files on U.S. publications the agency would seek to hide with this proposed law. To answer that, he said, would require further research. This suit seeks withheld documents on the New York-based radical Guardian, the defunct Washington, D.C., Quicksilver Times, which was infiltrated by C.I.A. agent Salvatore John Ferrera, and Ramparts magazine.

The C.I.A. claims the proposed law would cover up nothing. But really the measure would allow the agency to hide some of the most controversial information in its possession. Even if pending lawsuits were allowed to continue, as provided for in the House bill, the proposal would give the C.I.A. more ammo in court with which to fight future releases of information. Indeed, the court battles under the proposed law would be so expensive and lengthy that attempts to obtain information by F.O.I.A. lawsuit might be beyond the resources of journalists. The agency, never a friend of free information, always leaning naturally toward secrecy, will certainly use this proposed law to keep its operations secret.

Reporters need access to government documents to inform the public. To allow Mr. William Casey to designate which of his agency's documents will be kept from the public is a conflict of interest not allowed other agency chiefs. And when that CIA head himself was, as the President's campaign manager, involved in domestic political espionage, as exposed by Debategate scandals, the broadening of his already-considerable power to keep secrets seems a dubious proposition, especially when he is under fire for illegally withholding information from Congress regarding the mining of Nicaraguan ports. Instead, Congress might better safeguard open government by strengthening, not weakening, the power of the judiciary to inspect and order the release of information concerning the activities of all government agencies, especially the CIA, whose covert operations here and abroad continue to be so controversial.

And finally I would like to answer one question -- why, when the Department of Defense, like the CIA, holds much classified data, does the DoD so promptly respond to FOIA requests, while the CIA maintains such a large backlog? The answer was given to me by an old State Department and CIA hand, who attended the House Intelligence Committee hearing on this legislation. He said that the DoD has always kept on eye on public opinion, and has had to lobby hard and publicly for its appropriations. So when the public asks DoD for something under the FOIA, DoD responds as the laws says it must. But, pointed out this observer, the CIA has never had to worry as much about public opinion, nor about the public debate over its appropriations. That for me explained the mystery of why the CIA drags its feet on the FOIA when DoD, also full of secrets, makes an effort to comply with the time limits of the FOIA. What the CIA needs is not this legislation to clear up its paperwork, but rather instructions from Congress that it must now comply with the FOIA.